IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of:	:	
Terry Vovan	:	
Serial No.: 10/645,893	:	Group Art Unit: 1761
Filed: August 18, 2003	:	Examiner: Viren A. Thakur
For: CAKE CONTAINER COVER-BASE CONNECTION	:	

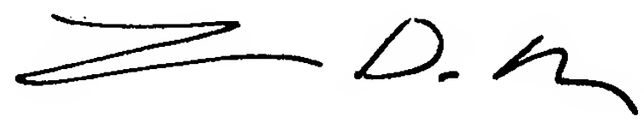
RELATED APPEALS, EVIDENCE, AND CITATION APPENDIX

Hon. Commissioner of Patents
Alexandria, VA 22313-1450

July 26, 2007
Los Angeles, CA 90024

1. There are no related appeals.
2. No evidence is presented and no evidence is cited.
3. No citation is made in this Appeal Brief.

Respectfully submitted,



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BRIEF FOR APPELLANT
UNDER MPEP 1206

Hon. Commissioner of Patents — July 26, 2007

Alexandria, VA 22313-1450 — Los Angeles, CA 90024

This is an appeal from the Examiner of Group Art Unit 3772 rejecting all remaining claims in the case.

(i) REAL PARTY IN INTEREST

The real party in interest is the assignee, PWP Industries, a California corporation with an address at 3751 Seville Avenue, Vernon, CA 90058.

(ii) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(iii) STATUS OF CLAIMS

Pending:	Claims 5-7 and 16-19	All claims 5-7 and 16-19 were rejected.
Canceled:	Claims 1-4, 8-15 and 20	Claims 1-4, 8-15 and 20 were rejected and withdrawn.

Appealed: Claims 5-7 and 18-19 Applicant does not appeal the rejection of claims 1-4, 8-17 and 20.

(iv) STATUS OF AMENDMENTS

An amendment was filed after final action and was entered.

(v) SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent Claim 5

Claim 5 describes a cake container such as shown in applicant's Fig. 1, which includes a base (14) with a base peripheral wall (24), and a cover (16) of transparent plastic sheet material with a cover peripheral wall (30). The container has an axis (18), and the base peripheral wall has radially outward-projecting dimples (26). The cover peripheral wall has dimple-receiving regions (32).

Fig. 2 shows that each dimple-receiving region (32) of the cover includes a chimney (52) for receiving a base dimple (26), by lowering the cover over the base until the dimple lies at 26A. Also, the dimple receiving region includes a cavity (54) to receive the dimple at 26B when the cover is turned. The cover is a transparent sheet. A person can see the chimney (52) as it is lowered on the dimple (26), and it would appear that the person can see the dimple received in the cavity.

Independent Claim 18

Claim 18 describes a cake container that includes a base member (14, Fig. 1) and a transparent cover member (16). One member form dimples (26) and the other forms chimneys (at 32) that receive the dimples. The member that forms chimneys forms dimple-receiving cavities (54, Fig. 2). Each dimple is formed to pass from a chimney (52) into a cavity (54) when the cover is turned. The member with the chimney has a transition location (62) that forms a constriction that resists turning the cover to move the dimple through the constriction. The specification states the dimple or cover must deflect in order for the dimple to pass the transition location (page 7, lines 18-21). This resists turning of the cover to unlatch it from the

base.

(vi) Ground of Rejection On Appeal

Claims 5-7 were rejected as obvious over Kalmanides in view of Elwell and Wexler. Claim 7 was rejected as indefinite. Claims 18-19 were rejected as obvious on Kalmanides in view of Elwell. The grounds of rejection to be reviewed are whether the claims are obvious over the references.

1. The Prior Art

Kalmanides	US 5,613,607
Elwell	US 1,515,560
Wexler	US 4,938,688

(vii) Argument

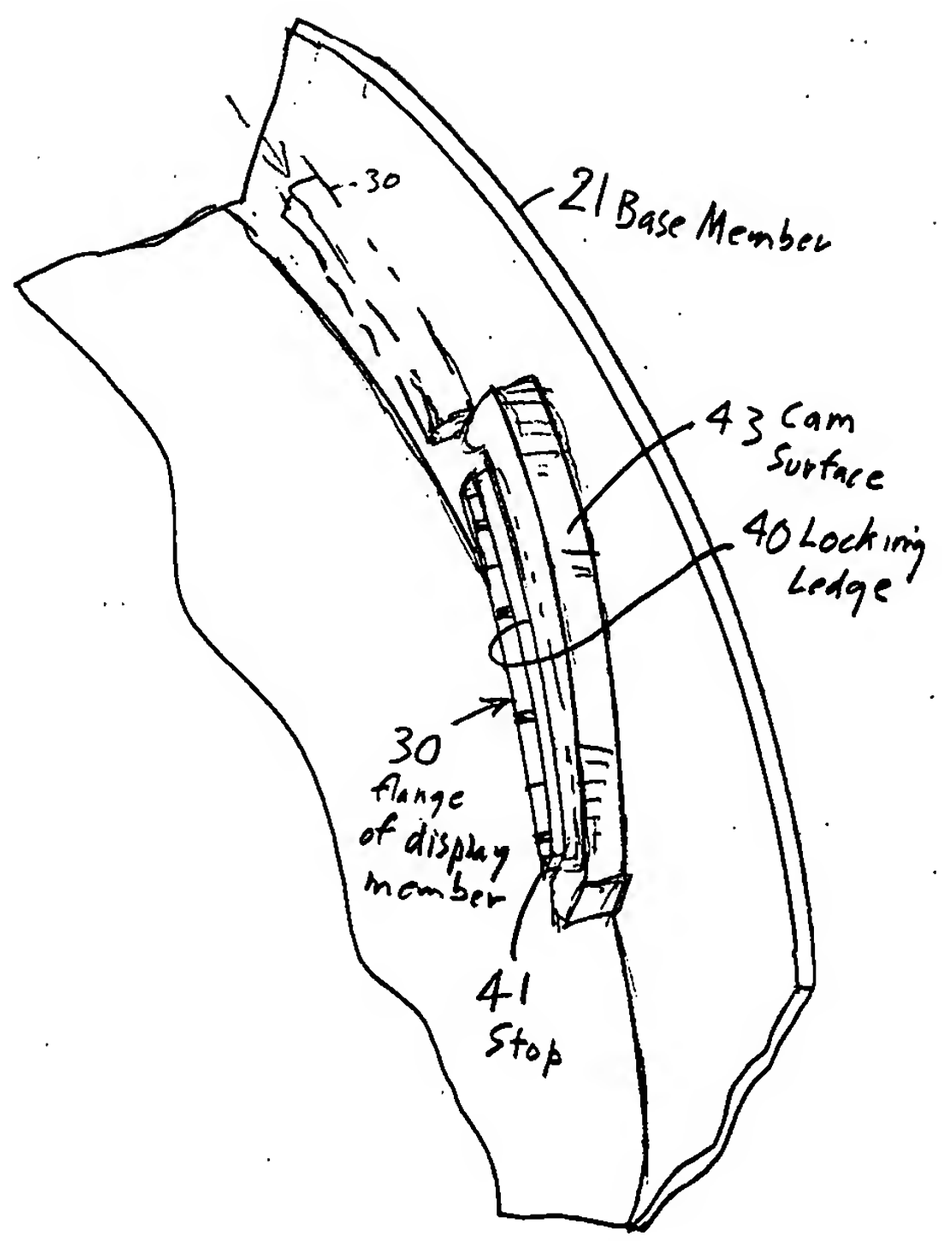
Discussion of Each Claim And The Ground of Rejection

Claim 5

Claim 5 describes a cake container base having outward-projecting dimples (26, applicant's Fig. 1) and a transparent sheet cover having dimple-receiving regions (32). Fig. 2 shows that each dimple-receiving region (32) of the cover includes a chimney (52) that can receive a dimple by lowering the cover. Each dimple-receiving region also includes a cavity (54) that can receive a dimple from an upper portion (60) of the chimney by turning the cover after it has been lowered. Although applicant does not specifically state in the specification that the transparent cover allows a person to see the dimples (26) enter the cavity (54), this is a result.

Claim 5 was rejected on Kalmanides in view of Elwell and Wexler. Kalmanides shows, in his Fig. 2, a base member 21 with a cam surface 43 and with a locking ledge 40 formed by inwardly deforming the cylindrical surface of

his base. He also shows a cover 22 with a flange 30. His Fig. 9 shows that when his cover ("display member") is turned, the cover flange 30 moves under his locking ledge 40 until it hits a stop 41 that prevents further cover turning. Kalmanides can be difficult to understand, and applicant has included a drawing herewith that better shows the flange under the locking ledge 40. His Figs. 16 and 25 show alternate embodiments.



Representation of Kalmanides 5,613,607

The flange 30 (his Fig. 9) of Kalmanides may be considered to be a dimple, but it is not received in a chimney. Kalmanides certainly does not show a cavity that receives his flange, after his cover is lowered so his dimple lies at the top of a chimney and his cover is then turned.

Elwell shows, in his Fig. 1, a cover with a chimney 30 that has an inclined top chimney portion, and that receives a lug 15. It appears that his cover is not of transparent material, so a person could not view his lug in his inclined top chimney portion.

Wexler shows a cake container (Fig. 5) with a transparent cover. A person forces down his cover 1, until a latching portion 19 snaps over a base rim 15 and hits a stop 20.

The references together do not anticipate claim 5 because none of the reference shows a cavity (e.g. 54 in applicant's Fig. 2) that receives a dimple (26) after the cover has been lowered, and is then turned. In Kalmanides, he must simultaneously lower and turn his cover until his cover flange 30 hits a stop

41. In Elwell, his chimney 30 ends in an inclined part, so his cover is continually both turning and moving down. His cover is not transparent so a person could not follow movement of his lug. In Wexler his cover does not turn at all.

Claim 6

Claim 6, which depends from claim 5, describes a narrowing transition location (62 in applicant's Fig. 2) which the dimple must pass through in order to pass from the cavity (54) to the top (60) of the chimney. The narrowing (at 62) resists turning of the cover so the cover can be opened. The three references, Kalmanides, Elwell, or Wexler do not show a separate cavity, or show a narrowing between such a cavity and the top of a chimney.

Claim 7

Claim 7, which depends from claim 6, describes the narrowing being in a direction that is radial to the vertical container axis (18, Fig. 1). Applicant's Fig. 6 shows a dimple at 26A that has been moved to 26B to lie in the cavity 54. The restriction 62 that resists such movement is a radially inward (I) deflection so the passage width is reduced to distance "E". None of the references Kalmanides, Elwell or Wexler show any restrictions, and do not suggest a narrowing in a direction radial to the container vertical axis.

Claim 7 was also rejected on the grounds that "the radial direction" has insufficient antecedent bases. Applicant disagrees. The specification describes, in the paragraph beginning on page 7, line 15, that "at the transition location 62, the radial distance E" is reduced from the larger distances G and H "with respect to a circle 64 centered on the container axis". Since the specification describes that "radial distance E... is reduced", applicant believes that this is a sufficient antecedent for "said narrowing is in the radial direction" of claim 7.

Claim 18

Claim 18 describes base and cover members (14, 16, Fig. 1) centered on a vertical axis (18). A first of the members has dimples (26) and the second member forms a recess (at 32). The second member forms a chimney (52 in Fig. 2) that receives the dimple. The second member also forms a cavity (54) and forms a transition location (62) between the chimney and cavity. The transition location has a constriction (e.g. shown at 62 in Fig. 6 where its radial depth is E) to resist turning the base on the cover.

As discussed above for claim 6, none of the reference Kalmanides, or Elwell shows a separate cavity or a constriction (62, applicant's Fig. 2) between such a cavity and the chimney, Kalmanides shows a cover flange (30, his Fig. 9) that slides under a ledge (40) but does not show any cavity into which the flange can move through a restriction. Elwell shows a chimney with an inclined upper part, but does not show a separate cavity connected by a restriction to his chimney.

Claim 19

Claim 19, which depends from claim 18, describes the transition location (62 in Fig. 6) as having a smaller radial depth (E for transition 62) than the depth of the dimple-receiving cavity (54 of depth H). Neither of the references shows a transition location between a cavity and chimney, or shows the transition location narrowing in radial depth.

In view of the above, applicant requests that the Examiner's rejection of claims 5-7 and 18-19 be reversed. No oral hearing is requested.

Respectfully submitted,

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APPENDIX TO APPEAL BRIEF
CLAIMS 5-7 and 18-19

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5. A cake container which includes a base lying on a vertical container axis, said base having a cake-supporting base surface and having a largely cylindrical base peripheral wall centered on said container axis and extending around said cake-supporting base surface, said cake container also including a cover that has a greater height than said base and that has a largely cylindrical cover peripheral wall centered on said container axis, wherein:

said base peripheral wall has a plurality of radially outwardly-projecting dimples;

said cover peripheral wall has a plurality of dimple-receiving regions, said dimple-receiving regions each having a chimney about as wide as one of said dimples to receive a dimple in a chimney upper portion by the cover being lowered around the base while chimney lower ends initially lie directly over said dimples;

said dimple-receiving regions each having a dimple-receiving cavity connected to one of said chimney upper portions to receive one of said dimples

when the cover is turned about said cover axis after the dimple has reached said chimney upper portion;

said base and said cover are each formed of a plastic sheet that has been deformed, and walls of said dimple-receiving regions and said dimples each can deflect radially to assure that the dimples can be received in the dimple-receiving regions despite tolerances in manufacture, and said cover is formed of a transparent plastic sheet.

6. The cake container described in claim 5, wherein:

said dimple-receiving cavities each have a transition location between its chimney upper portion and a dimple-holding cavity, said transition location forming a narrowing through which the corresponding dimple must pass to provide resistance to dimple movement between the dimple holding cavity and the chimney upper portion.

7. The cake container described in claim 6 wherein:

said narrowing is in the radial direction of the transition location with the radial direction being a direction radial to said vertical container axis.

18. A cake container for holding a cake or other pastry, which includes a base member of a formed first plastic sheet on which the pastry lies and a transparent cover member of a formed second plastic sheet that is transparent to allow a buyer to see the pastry, said base and cover being centered on a vertical axis, wherein:

a first of said members forms a plurality of dimples in its plastic sheet, each dimple having inner and outer surfaces with one surface forming a projection and the other surface forming a recess;

a second of said members forms a plurality of vertically extending hollow chimneys that each receives the projection of one of said dimples, said second member also forms dimple-receiving cavities each with a wall that prevents a

dimple from moving in a vertical direction that would disconnect the members, each dimple constructed to pass from one of said chimneys into one of said dimple-receiving cavities when said cover is turned about said axis, the plastic sheets of said members being deflectable to enable close reception of each dimple in a dimple-receiving cavity by radial deflection of the members;

said second member forms a transition location between each chimney and each corresponding dimple-receiving cavity, each transition location has a constriction to resist turning of said cover on said base to move one of said dimples through the constriction into one of said chimneys.

19. The cake container described in claim 18, wherein:

each of said dimple-receiving cavities has a maximum radial depth, and each of said transition locations has a smaller radial depth than the maximum radial depth of a dimple-receiving cavity.

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